

HOUSE No. 900

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative To Home Owners Insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jennifer M. Callahan	18th Worcester
Thomas M. McGee	Third Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO HOME OWNERS INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. All assets and liabilities of the association established under chapter 175C of the General Laws are hereby transferred to the Massachusetts property insurance plan established pursuant to SECTION 2 of this act. Upon the transfer of such assets and liabilities the association shall have no authority to provide basic property insurance to eligible applicants and shall cease issuing insurance policies.

SECTION 2. The General Laws are hereby amended by inserting after chapter 175J the following chapter:—

CHAPTER 175K

MASSACHUSETTS PROPERTY INSURANCE PLAN

Section 1. Definitions. As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Actuarially sound rate”, an estimate of the expected value of all future costs associated with the transfer of risk.

“Assessable Insured” or “Assessable Insureds”, the purchasers or policyholders under all personal lines property and casualty insurance policies and under all commercial property insurance policies issued in the commonwealth, including purchasers or policyholders of policies issued by the plan and purchasers or policyholders of such insurance policies obtained from surplus lines insurers.

“Association”, the joint underwriting association established by chapter 175C to provide basic property insurance to eligible applicants.

21 “Basic property insurance”, insurance against direct loss to property as defined and limited in the
22 standard fire policy and extended coverage endorsement thereon, filed with and accepted by the
23 commissioner, and insurance against direct loss to such property from the perils of vandalism
24 and malicious mischief and dwelling coverages and homeowners coverages, including the
25 scheduled personal property endorsement and such other coverages as the commissioner after
26 public hearing shall determine or the Secretary of the United States Department of Housing and
27 Urban Development shall designate by rule made in accordance with the provisions of the Urban
28 Property Protection and Reinsurance Act of 1968 (Public Law 90-448) but shall not include
29 insurance on automobile or manufacturing risks except such classes of manufacturing risks as
30 may, after proper hearing, be designated by the commissioner. Basic property insurance shall
31 include such related liability coverages as determined to be necessary by the board.

32 “Board”, the board of the Massachusetts property insurance plan, established by section 2.

33 “Commissioner”, the commissioner of insurance.

34 “Eligible applicant”, any person having an insurable interest in property eligible for basic
35 property insurance or for windstorm insurance who is unable to obtain such coverage in the
36 voluntary market.

37 “Insurer”, an insurer licensed or otherwise authorized to transact any form of property and/or
38 casualty insurance under chapter 175 of the General Laws.

39 “Plan,” the Massachusetts property insurance plan established by section 2.

40 “Special broker,” an insurance broker licensed under the provisions of section 168 of chapter 175
41 of the General Laws.

42 “Windstorm insurance,” insurance against direct loss to property from the risk of windstorm as
43 defined and limited in the windstorm policy and forms approved by the commissioner.

44 Section 2. Establishment of Plan. (a) There shall be a body politic and corporate and a public
45 instrumentality to be known as the Massachusetts property insurance plan, which shall be an
46 independent public entity not subject to the supervision and control of any other executive office,
47 department, commission, board, bureau, agency or political subdivision of the commonwealth
48 except as specifically provided in any general or special law. The exercise by the plan of the
49 powers conferred by this chapter shall be considered to be the performance of an essential public
50 function. The purpose of the plan is to facilitate the availability of basic property insurance and
51 windstorm insurance to eligible applicants.

52 (b) There shall be a board, with duties and powers established by this chapter, that shall govern
53 the plan, subject to the supervision of the commissioner. The board shall consist of eleven
54 members appointed by the commissioner to three-year, staggered terms as determined by the
55 commissioner from the following categories: (i) one representative of an insurer selected from a
56 list submitted by the American Insurance Association; (ii) one representative of an insurer
57 selected from a list submitted by the Massachusetts Insurance Federation; (iii) one representative

of an insurer selected from a list submitted by the National Association of Mutual Insurance Companies; (iv) one representative of an insurer selected from a list submitted by the Property Casualty Insurers Association of America; (v) two representatives of insurers selected by the commissioner to ensure balance and diversity among the insurer representatives; (vi) two insurance producers selected from a list submitted by the Massachusetts Association of Insurance Agents; and (vii) three public representatives not affiliated with the insurance industry.

(c) Six members of the board shall constitute a quorum, and the affirmative vote of six members of the board shall be necessary and sufficient for any action taken by the board. Members shall serve without pay, but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the plan. The chairperson of the board shall annually submit a report to the commissioner and to the general court on the results of its operations and its financial condition..

(d) The board shall within sixty days of their appointment submit to the commissioner for his or her approval a plan of operation setting forth the manner in which the plan will operate and such other details as may be required by the commissioner. The board shall submit amendments to the plan when determined necessary by the board or when requested by the commissioner.

(e) The plan shall have the power to appoint and employ officers, including an executive director, and to fix their compensation and conditions of employment.

(f) The plan may indemnify any member, officer or employee from personal expenses or damages incurred, arising out of any claim, suit, demand or judgment which arose out of any act or omission of such member, officer or employee, including the violation of the civil rights of any person under any federal law if, at the time of such act or omission such member, officer or employee was acting within the scope of his official duties or employment.

(g) Meetings of the board shall be conducted in accordance with the provisions of section eleven A1/2 of chapter thirty A.

Section 3. Powers of Plan. The plan is hereby authorized and empowered:

(a) to adopt by-laws for the regulation of its affairs and the conduct of its business;

(b) to adopt an official seal and alter the same at its pleasure;

(c) to maintain offices at such places within the commonwealth as it may determine and to conduct meetings of the plan in accordance with the by-laws of the plan and the provisions of the second paragraph of section fifty-nine of chapter one hundred and fifty-six B;

(d) to sue and be sued in its own name, plead and be impleaded;

(e) to issue insurance policies providing coverage for basic property insurance and for windstorm insurance;

(f) to determine and charge premiums to eligible applicants for basic property insurance and windstorm insurance.

(g) to adjust and pay claims arising under basic property insurance policies and under windstorm insurance policies;

(h) to provide incentives for insurers to take business out, and/or to keep business out, of the plan;

(i) to invest in any of the investments authorized under section 63 of chapter 175 of the General Laws;

(j) to procure reinsurance;

(k) to issue notes or bonds for any of its corporate purposes related to providing basic property insurance and windstorm insurance payable from premiums paid on basic property insurance policies and on windstorm insurance policies and from assessments collected by the plan as provided in this chapter;

(l) to borrow from, or enter into other financing arrangements with, any market sources at prevailing interest rates;

(m) to make and enter into all contracts and agreements necessary, convenient or desirable in the performance of its duties and the execution of its powers under this chapter (s) to employ consulting actuaries, attorneys, accountants, insurance and financial experts and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(n) to take all actions necessary to facilitate and maintain tax-free status for the income and operations of the plan, and to facilitate tax-free status for bonds or other indebtedness issued by or on behalf of the plan;

(o) to do all acts and things necessary, convenient or desirable to carry out the powers expressly granted in this chapter.

Section 4. Separate Accounts. (a) All revenues, assets, liabilities, losses and expenses of the plan shall be divided into two separate accounts established by the board, the Massachusetts Basic Property Insurance Account and the Massachusetts Windstorm Insurance Account.

(b) The Massachusetts Basic Property Insurance Account shall receive such proportion of the transferred assets and liabilities of the association as the board determines will reasonably reflect the proportion of such assets and liabilities generated from association policies in non-coastal regions. In addition, the board shall deposit premiums collected on policies of basic property insurance issued by the plan in, and shall pay losses on policies of basic property insurance issued by the plan, from this account.

(c) The Massachusetts Windstorm Insurance Account shall receive such proportion of the transferred assets and liabilities of the association as the board determines will reasonably reflect the proportion of such assets and liabilities generated from association policies in coastal

regions.. In addition, the board shall deposit premiums collected on policies of windstorm insurance issued by the plan in, and shall and pay losses on policies of windstorm insurance issued by the plan from, this account. .

(d) The board shall cause to be prepared an annual financial report for each account on such forms as may be prescribed by the commissioner.

Section 5. Initial Capitalization. The initial capital necessary for the operations of the plan, shall be obtained as follows:

(a) As provided in SECTION 1 of this act, the assets and liabilities of the association shall be transferred to the plan. The board shall allocate such assets and liabilities to the separate accounts established by section 4 in a manner that reflects the expected premiums and losses of each account.

(b) For the purpose of defraying the startup costs of the plan and for the purpose of providing an initial capital contribution to the plan from the commonwealth, the sum of \$7.5 million is appropriated to the plan for the fiscal year 2009, and the sum of \$7.5 million is appropriated to the fund for the fiscal year 2010. The board shall allocate the funds received under this subsection to the separate accounts established by section 4 in a manner that reflects the expected premiums and losses of each account.

Section 6. Provision of Insurance Coverage. (a) The plan shall provide basic property insurance to eligible applicants anywhere in the commonwealth in accordance with such underwriting standards as the board shall approve.

(b) The plan shall provide windstorm insurance to eligible applicants in the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth and Suffolk in accordance with such underwriting standards as the board shall approve. The board may expand the availability of windstorm insurance to other communities or counties of the commonwealth upon its determination that there is a market need for such expansion of coverage.

Section 7. Premiums Charged for Insurance Coverage. The board shall charge premiums to eligible applicants for basic property insurance and for windstorm insurance that are based on actuarially sound rates and that are neither excessive, inadequate nor unfairly discriminatory. For windstorm insurance, the premiums charged shall be based on the actuarially sound rate for the exposure insured, including an allowance for the catastrophe exposure based on modeled windstorm losses with a return period of not less than 125 years and including applicable reinsurance transactions. For insured properties that are primary residences with building values of less than \$250,000, the premiums for such properties for windstorm insurance shall include an allowance for the catastrophe exposure and applicable reinsurance transactions based on modeled windstorm losses limited to events with a return period of 100 years or less. The premiums charged shall be based on the location and value of the insured property, shall provide for reasonable deductibles and shall take into account loss mitigation efforts by insureds. The premiums charged shall include additional amounts if needed to pay debt service on revenue

bonds issued under this chapter and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under this chapter.

Section 8. Other Charges. In addition to the premiums charged for insurance coverage provided by the plan, the board shall impose, collect and retain an amount equal to the premium tax provided for in section 22 of chapter 63 of the General Laws to augment the financial resources of the plan.

Section 9. Commissions. Insurance producers submitting applications to the association shall be compensated by commissions upon the original issuance of coverage, each installment payment if any, and each renewal thereof and shall be entitled to no other compensation. Commissions to licensed insurance producers shall be set by the board from time to time at such percentage of the average commission rate customarily paid by insurers who customarily compensate producers by commissions, as the board shall find to be sufficiently attractive to encourage producers to actively seek out risks and to assist property owners to obtain coverage while at the same time leaving a further incentive to the agent or broker to place such business through his customary markets when he finds that it is practicable.

Section 10. Bonding. (a) Upon a determination by the board that such action would enable it to better meet the existing or future financial obligations of the plan and that such financings are reasonably necessary to effectuate the requirements of this act, the board may take the necessary steps for the issuance of revenue bonds for the benefit of either the Massachusetts Basic Property Insurance Account or the Massachusetts Windstorm Insurance Account.. The proceeds of these revenue bonds may be used to pay losses under policies issued by the plan; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, and related administrative expenses; or for such other purposes related to the financial obligations of the separate accounts established by section 4 as the board may determine. The term of the bonds may not exceed 30 years. The board may pledge all or a portion of all premiums to secure these revenue bonds, and the board may execute such agreements between the board and the issuer of any revenue bonds and providers of other financing arrangements as the board considers necessary to evidence, secure, preserve, and protect this pledge.

(b) The funds, credit, property, or taxing power of the commonwealth or political subdivisions of the commonwealth shall not be pledged for the payment of these bonds.

(c) The issuance of bonds under this section is for the public purpose of paying the claims of policyholders to assure that policyholders are able to pay the cost of construction, reconstruction, repair, restoration, and other costs associated with damage to property of policyholders of covered policies.

(d) The bonds of the plan are not a debt of the commonwealth or of any political subdivision other than the plan, and neither the commonwealth nor any political subdivision other than the plan is liable on these bonds. The plan does not have the power to pledge the credit, the

revenues, or the taxing power of the commonwealth or of any political subdivision other than the plan. The credit, revenues, or taxing power of the commonwealth or of any political subdivision other than the plan shall not be considered to be pledged to the payment of any bonds of the plan.

(e) All bonds of the plan shall be and constitute legal investments without limitation for all public bodies of the commonwealth; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the commonwealth and shall be and constitute eligible securities to be deposited as collateral for the security of any commonwealth, county, municipal, or other public funds. This paragraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this paragraph.

Section 11. Assessments. (a) If the board determines that the unencumbered balance of either the Massachusetts Basic Property Insurance Account or the Massachusetts Windstorm Insurance Account is insufficient to pay the obligations, costs, and expenses of the account including payment of claims under policies issued by the plan, operating expenses of the plan, repayment of revenue bonds and that portion of the debt service coverage not met by premiums received under insurance policies issued by the plan, the board shall levy, by order, an assessment on assessable insureds, measured by direct written premiums for all property and casualty lines of business in the commonwealth, including the property and casualty business of surplus lines insurers. The assessment shall be specified as a percentage of future premium collections and is subject to annual adjustments by the board to reflect changes in premiums subject to assessments collected under this paragraph in order to meet debt obligations. Any such assessment shall be allocated so that assessable insureds under policies issued by the plan pay, at the policy level, fifty per cent more as an individual assessment than those assessable insureds under policies not issued by the plan. Except for the allocation between insureds under policies issued by the plan and other assessable insureds, the same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

(b) The assessment on assessable insureds under this section shall be collected by all insurers, including the plan, at the time the insurer collects the premium for each policy procured by an assessable insured. With respect to assessments of surplus lines premiums, each special broker shall collect the assessment from the assessable insured. Each insurer or special brokers shall collect from each assessable insured the full amount of the assessment payable in respect to the policyholder's policy. All premium notices or invoices issued after an assessment is levied shall include a statement of the amount of the assessment, if any, listed separately from the amount of the premium.

(c) An annual assessment under this section shall continue as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

(d) Insurer and special brokers shall remit the assessments collected to the plan as provided in the order issued by board. Each insurer and special broker collecting assessments shall provide the information with respect to premiums and collections that may be required by the board for verification of compliance with this section.

(e) Any assessment authority not used for a particular year may be used for a subsequent year, but the combined percentage level of all assessments may not exceed the maximum specified in subsection (c). After assessments have been levied, if the board determines that the unencumbered balance of either the Massachusetts Basic Property Insurance Account or the Massachusetts Windstorm Insurance Account and assessment proceeds are insufficient to pay the obligations, costs, and expenses of such accounts, including repayment of revenue bonds and that portion of the debt service coverage not met by premiums, the board shall levy an additional assessment up to an amount not exceeding the amount of unused assessment authority from a previous year or years.

(f) The assessments authorized by this section are the legal obligation of the assessable insured. The emergency assessments are not premiums and are not subject to any taxes, fees, or commissions. The amounts imposed on assessable insureds under this section are not subject to any retaliatory tax provisions or similar provisions. An insurer may treat the failure of an assessable insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

(g) When an insurer is required to return an unearned premium, it shall also return any assessment collected from the assessable insured that is attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the plan, but the insurer is not entitled to a refund.

Section 12. Loss Mitigation Programs. The board shall establish loss mitigation programs which shall include, among other things: (1) providing premium credits for policyholders who undertake investments in mitigation programs developed or approved by the board; and (2) providing funding for local governments, public agencies, public and private educational institutions, and/or or nonprofit organizations to support programs intended to improve windstorm preparedness, reduce potential losses in the event of a windstorm or other loss, provide research into means to reduce losses, educate or inform the public as to means to reduce windstorm and other losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades, or protect local infrastructure from potential damage from a windstorm. In any one year, the board may expend on loss mitigation programs no more than 1/3 of the amount of the annual investment income earned by the plan during the previous calendar year.

Section 13. Reinsurance. The board shall consider developing and shall annually reassess the need for a reasonable and prudent reinsurance program to enhance the capability of the plan to timely and efficiently handle claims and to maximize the capacity of and spread the insurance risks of the plan.

Section 14. Liability of Board and Employees. There shall be no liability on the part of, and no cause of action shall arise against, any board members, officers or employees of the association for any actions

taken by them in the performance of their duties under this paragraph if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by willful or wanton misconduct.

Section 15. Tax Status. (a) The property, revenues, and other assets of the plan, the transactions and operations of the plan and the income from such transactions and operations and all bonds issued under this subsection and interest on these bonds are exempt from taxation by the commonwealth.

(b) The board shall promptly seek a determination from the Internal Revenue Service establishing that the plan and the separate accounts established by section 4 are exempt from federal taxation and that bonds issued by the plan may be issued on a tax-free basis. In the event of an unfavorable determination, the board shall recommend appropriate amendments to this chapter.

Section 16. The corporate existence of the plan shall continue until terminated by law, but no such law shall take effect as long as the plan has bonds outstanding unless adequate provision has been made for the payment of those bonds pursuant to the documents authorizing the issuance of those bonds. Upon termination of the plan, any remaining funds after settlement of all outstanding obligations shall revert to the commonwealth.

Section 17. Upon the creation of a federal or multi-state catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund created by this chapter, the board may take such action for coordination with or participation in the federal or multi-state program or for such other actions as the board finds appropriate in the circumstances.

SECTION 3. The provisions of this act are hereby declared to be severable and if any such provisions or the application of such provisions to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this act or the application of such provisions to persons or circumstances other than those as to which it is held invalid.

SECTION 4. This act shall take effect on passage.